

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1033 of 1999

in

SPECIAL CIVIL APPLICATION No 5245 of 1999

with

CIVIL APPLICATION NO. 7592 OF 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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CHANDLODIA SEVA SAHKARI MANDALI LTD.

Versus

STATE OF GUJARAT  
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Appearance:

MR N D NANAVATI, SR.ADVOCATE WITH HARIN P RAVAL for Appellant  
MR K.G.VAKHARIA, SR ADVOATE WIOTH MS AVANI S MEHTA for  
Respondent No. 8  
MR S.N.SHELAT, ADDL.ADVOCATE GENERAL WITH MR. BHATT,  
ASSTT.GOV.T.PLEADER FOR RESPONDENT AUTHROITIES.  
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CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE K.M.MEHTA

Date of decision: /12/1999

Per Thakker, Actg. C.J.:

This appeal is filed against an interim order passed by the learned Single Judge on July 24, 1999 vacating ad-interim relief granted earlier.

Appellant was the original petitioner. He filed SCA No. 5245 of 1999 for an appropriate writ, direction or order quashing and setting aside the order dated July 13, 1999 passed by the Additional Registrar (Appeals), Cooperative Societies, Gandhinagar cancelling registration of the petitioner society and to direct him to revive the order dated September 30, 1996 passed by the Addl. Registrar, Cooperative Societies, Ahmedabad district, registering the petitioner society under the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as 'said Act').

The case of the petitioners was that it was a cooperative society registered under the Act and was also a member of Ahmedabad District Cooperative Bank Limited. It was registered in accordance with law on September 30, 1996. The term of the Managing Committee of Ahmedabad District Cooperative Bank Limited was to expire on February 26, 1998. In accordance with the provisions of the Act and the Gujarat Specified Cooperative Societies (Election to Committee) Rules, 1982, the petitioner could nominate one delegate to the Ahmedabad District Cooperative Bank Limited to represent the petitioner society. A delegate was thus nominated on December 29, 1998 and his name was accordingly included in the provisional list of voters dated June 18, 1999 for ensuing election to the Managing Committee of Ahmedabad District Cooperative Bank Limited. Against inclusion of name of the delegate of the petitioner society, an objection was raised that the petitioner society could not have been registered as a society in accordance with provisions of the Act. The Additional Registrar (Appeals) registered the objection as suo motu revision under Section 155 of the Act and by the order impugned in the petition, dated July 13, 1999, cancelled the registration of the petitioner. Being aggrieved by the said order, SCA No. 5245 of 1999 was filed. It came up before the learned Single Judge admitted it by issuing Rule and notice as to interim relief was also made returnable on July 22, 1999. In the meantime, the impugned order passed by the Additional Registrar was also stayed.

Learned Single Judge who heard the matter on interim relief vacated the same vide an order dated July 24, 1999 which is impugned in the present appeal.

The learned Single Judge while vacating the ad-interim relief made observation that the order was passed by the Additional Registrar on two counts viz. firstly, on the date of registration of the society, the society did not fulfil the prerequisite conditions in accordance with law for being registered as a cooperative society, and secondly, the society had become defunct and no activity was being carried on by it. Learned Single Judge was of the opinion that the petition was already admitted, but as in the opinion of the competent authority, the petitioner society could not have been registered at the initial stage, no interim relief could be granted. He, therefore, vacated ad-interim relief granted earlier. The said order is challenged before us.

We have heard Mr. N.D. Nanavati, senior advocate with Mr. Harin Raval for the petitioner and Mr. S.N.Shelat, Additional Advocate General for the State.

It was submitted by Mr. Nanavati that the learned Single Judge has committed an error of law in vacating ad-interim relief granted by a coordinate court. It was also submitted that when the petition was admitted by issuing Rule, ad-interim relief was granted and the petition awaits final hearing, vacation of ad-interim relief would tantamount to dismissal of the petition which ought not to have been done. It was also submitted that the learned Single Judge has committed an error of law in observing that on two counts, the Additional Registrar (Appeals) cancelled registration of the petitioner society. According to Mr. Nanavati, the Additional Registrar has not recorded a finding that the petitioner society had become defunct and no activity was being carried on by it. He also submitted that the learned Single Judge has committed an error of law in making the following observations:

"Admittedly, no loans were advanced by the petitioner society to its members.

As regards the petitioner's grievance that notice was not served upon the petitioner society, that allegation is denied by the respondents. Assuming that there was failure to comply with the principle of natural justice for giving

reasonable opportunity of being heard, the petitioner society has not shown any proof of activity after its registration till the date of the impugned order."

Mr. Nanavati submitted that no opportunity was afforded to the petitioner and the learned Single Judge has committed an error of fact as well as of law by making the above observations. He further submitted that the learned Single Judge was also in error in observing that allegations levelled by the petitioner were denied by the respondents. According to him, no counter affidavit was filed by the authorities denying the allegations and the learned Single Judge has proceeded on assumptions and surmises. He also submitted that looking to the audit report, it was found that loans and advances were made by the society. There was ample evidence to prove that the activities of the petitioner society were being carried on and that it had not become defunct. He submitted that the petitioner society itself was given loans at a belated stage and only thereafter the petitioners society could advance loans to its members. Thus, it was not a case of defunct society as observed by the learned Single Judge and when considering the prima facie case, Rule was issued by a coordinate court and ad-interim relief was granted, it ought not to have been vacated.

Mr. Shelat, on the other hand, supported the order of the learned Single Judge. He submitted that ad-interim relief was granted by the learned Single Judge ex-parte. But when initial action of registration of the petitioner society itself was contrary to law and prerequisite were not present, it could not have been registered. By granting ad-interim relief, the learned Single Judge had committed an error of law which was corrected by the coordinate court after hearing both the sides. Grant of ad-interim relief in such cases would tantamount to allowing the petition at that stage and setting aside the order passed by the authorities under the law. He further submitted that Rule is already issued and the matter will be decided on merits. During the pendency of the petition, if interim relief which would result in virtually allowing the petition is refused by the learned Single Judge after hearing the parties, no fault can be found with the order and LPA deserves to be dismissed.

In the facts and circumstances of the case, in our opinion, the order passed by the learned Single Judge

does not deserve interference. True it is, that the petition is admitted and Rule is issued. At the same time, it cannot be ignored that after considering the facts and circumstances of the case, the Additional Registrar cancelled registration of the appellant society. No doubt, several points have been raised by the learned counsel for the appellant. It was also contended that the Additional Registrar has committed an error of law in passing the order and also in observing that there were no minimum number of members as required under the Act and that two members of the same family could not have been included in the application for registration. According to Mr. Nanavati, the two persons said to have been found from one family in fact did not belong to one family. Moreover, there were other applicants also. Finally, even if it is assumed that two members were of the same family, both cannot be excluded and at the most, only one can be excluded and in that case also, there would be minimum number of applicants. He submitted that the objection which was raised was by a person who can be said to be a foreigner and totally stranger and if he could not have moved the authorities for cancellation of registration, the Additional Registrar had no power, authority or jurisdiction to look into the matter and he could not have entered into merits of the case. On that ground also, the order was liable to be quashed and set aside.

In our opinion, however, all these questions can be raised at the time when the matter will be placed for final hearing. As on today, the order passed by the Additional Registrar stands according to which, the petitioner society could not have been registered at all as prerequisite conditions were not fulfilled. If taking into account that fundamental and basic fact, the learned Single Judge has vacated ad-interim relief, it cannot be said that by doing so, an error of law and/or of jurisdiction is committed by the learned Single Judge.

For the foregoing reasons, we see no infirmity in the order passed by the learned Single Judge and the LPA deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there will be no order as to costs. No order on civil application.

It was stated at the Bar by Mr. Raval for the appellant that in SCA No. 5225 of 1999, ad-interim relief was granted which was continued against cancellation of registration. At the time of hearing of ad-interim relief, said relief was continued to enable the appellant to approach Division Bench. Said relief was continued

which is ordered to continue till January 10, 2000. It is clarified that so far as continuation of this interim relief is concerned, it is only qua registration and it is not against deletion of entry in the final voters' list.

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